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Supreme Court, U.S.
FILED
JAN 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-710

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

EDWIN SLADE,

Petitioner,

vs.

THE UNITED STATES OF MEXICO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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The petitioner Edwin Slade, unschooled in law, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia filed on May 27, 1986.

OPINION BELOW

The U.S. District Court for the District of Columbia found the defendant wholly immune from suit. This is reversible error, for since the doctrine announced by Chief Justice Marshall in the Schooner Exchange v. McFadden 11 U.S. (7 Cranch) 116 (1812) case, any immunity extended to a nation was merely a matter of grace which could be changed at the pleasure of the United States, and respondent should have been on notice that it could not rely on sovereign immunity as a right owed to it by the United States for a commercial act.

Furthermore, the defense of sovereign immunity against a jurisdictional issue is an affirmative defense which must be proven by respondent. As such, at the time of the original bond issue in the United States, respondent should have submitted a petition requesting immunity to the State Department. No evidence of such a

petition was introduced in this case; nor could it have ever been granted, because of the commercial nature of the transaction in question. The lower court should have found that respondent has not proven, nor does enjoy, sovereign immunity in this case.

The lower court erred in its ruling protecting Mexico's antecedent rights, for it should have found Mexico had no antecedent rights prior to the enactment of the FSIA, and there were none to protect. Furthermore, the lower court did not rule on petitioner's suit to sue Mexico for a guaranteed debt existing in 1980, with the prospect of satisfying that debt with monies earned by Mexico in the United States after 1980.

The FSIA adds no new law, but only codifies existing law.

On the other hand, petitioner has the right to sue a foreign sovereign by virtue of Article III Section 2 of the

U.S. Constitution.

CLARIFICATION OF STATEMENT OF THE CASE

This case is the result of an original bonded dollar debt issued in the United States and defaulted on by a foreign sovereign. In various attempts to cure the default, subsequent agreements were entered into by Mexico. It is important to note that the terms of every subsequent agreement provided that if said agreement was not carried out, the original rights of the bondholder would be reinstated.

Petitioner maintains that these rights include all of the sovereign guarantees enumerated in the original bonds, further re-iterated by a sovereign promise that they would be revived. This is the position that the New York State Supreme Court held in Lamont v. Travelers Ins. Co. 281 N.Y. 362, 24 N.E.2d 81(1939), when it ruled that a default of a

subsequent agreement did not relieve Mexico of the obligation to pay the debt.

A sovereign cannot declare bankruptcy to avoid its just debts, for it is always sustained by its taxation revenue.

Since part of the guarantee included revenue from the Texas-Mexican Railroad located in the United States of America, this suit was brought envisaging the prospective application of the FSIA, a remedy available to petitioner at the commencement of his suit in 1980.

DEFENDANT'S ARGUMENT IS ERRONEOUS

Petitioner alerts the court that respondent argues to a different "Question Presented" than that raised by the petitioner. Petitioner has adequate answers to respondent's brief, even though respondent's brief is not salient. Respondent only considers the question of immunity between 1922 and 1951, and even if he prevails, does not defeat

petitioner's assertion of jurisdiction in 1980.

Respondent erroneously asserts that "The FISA has never been used by any court to confer subject matter jurisdiction over pre-1952 transactions." (Respondent's Brief in Opposition p.7) In the opinion written by then Circuit Judge Scalia in the case of Asociacion de Reclamantes v. The United Mexican States, 735 Fed 2d 1517 (1984) p.1520, the D.C. Circuit Court was given subject matter jurisdiction over events taking place in pre-1952 transactions (e.g.1941). In that case, Mexico benefitted from retroactive application of the FSIA. It is inconsistent and illogical for the same defendant to now argue the reverse, and claim the FSIA is not retroactive and would take away its antecedant rights of sovereign immunity (when it has none). A foreign sovereign, by all norms of international law, has the duty to honor its sovereign promise underlying the

redemption of its bonds, in order to maintain respect for contractual undertakings (von Mehren, International Arbitrations Between States and Foreign Private Parties: 7 Am.J.Int'l.L. p.514 July 1981).

Petitioner notes that the decision in Chisholm v. Georgia, 2 U.S. (2 Dallas) never abrogated the right of a U.S. citizen to sue a foreign sovereign.

Respondent cites Berizzi Brothers Co. v. S.S. Pesaro, 271 U.S. 562, 70 L.Ed. 1088, 46 S.Ct. 611 (1926) without noting that this case stands for the proposition that Congress should avoid "sudden changes" in the immunity of foreign states without prior adequate notice. This decision was rendered after the debt certificates, which are the subject of this case, were issued.

Indeed, the case of Schmidt v. Polish People's Republic, 742 F.2d 67 (CA2 1984) found that "FSIA gives the Court

jurisdiction over any non-jury civil action against a foreign state as long as the defendant is not entitled to sovereign immunity." This case involved transactions dating back to 1937.

The courts have ruled on foreign sovereign debts being of commercial character, which deprives the sovereign of immunity in this country. See Sugarman v. Aero Mexico Inc. 626 F.2d 270 and Behring International v. Imperial Iranian Air Force, 475 F. Supp. 383.

Respondent quotes the "doctrine of foreign sovereign immunity" (Respondent's Brief in Opposition p.4) without giving a citation as to its source, which in fact does not exist as a written body of law. In Mexico v. Hoffman, 324 U.S. 30, 89 L.Ed. 729, 65 S.Ct. 530 (1945) the Supreme Court made it clear that there was no doctrine of absolute sovereign immunity in the United States on which

foreign sovereigns could rely.

Finally, respondent cites Jackson v. Peoples Republic of China to defeat Slade v. United States of Mexico, and the Eleventh Circuit Court of Appeals cites Slade to defeat Jackson. It is respectfully noted that both Slade and Jackson are before the October Term of this court seeking writs of certiorari.

REASONS FOR ALLOWING WRIT

It is the duty of the Supreme Court to oversee the administration of justice below and make such rulings and fashion such remedies by virtue of 28 USCA 1651 that are just.

Petitioner argues that respondent, by introducing a guaranteed debt instrument in this country subject to the laws of the United States, and not redeeming same, is acting unjustly.

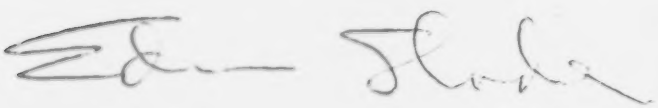
The lower court, misdirected by specious arguments of respondent (which wholly

inures to the benefit of the debtor), ruled that Mexico was wholly immune from suit which is unjust to petitioner, in that it violates rights guaranteed under Article III, Sec. 2 of the U.S. Constitution.

CONCLUSION

For all the foregoing reasons, petitioner Edwin Slade respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia in the above captioned case.

Respectfully submitted,



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January 1, 1987